

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

November 10, 2004, 10:00 AM – 2:00 PM

119 A/B Conference Rooms

CIDVC Website: <http://www.supreme.state.az.us/cidvc/>

CIDVC Members Present:

Hon. William O'Neil, Chair
Jerry Bernstein, Esq.
Allie Bones
Hallie Bongar White (Telephonic)
Evelyn Buckner
Mark Carpenter
Larry Farnsworth
Hon. Elizabeth R. Finn
Martha Fraser Harmon
Hon. Sherry L. Geisler
Hon. Danna Hendrix (Telephonic)
Bob James
Hon. Ronald Karp
Patricia Klahr
Hon. Michelle Lue Sang
Hon. Mary Helen Maley
Richard McLane
Hon. Mark Moran
John Pombier, Esq.
Tracey Wilkinson

Members Represented by Proxy:

Hon. George T. Anagnost (Proxy: Bob James)
Mary Ann Lanzilotta (Proxy: Hon. Danna Hendrix)
Sheri Lauritano (Proxy: Amy Bain)
Denise Lundin (Proxy: Hon. William O'Neil)
Anu Partap (Proxy: Bertha Martinez)

Member Not Present:

Donna Irwin

Staff Present:

Konnie K. Neal, CIDVC Specialist
Elizabeth Portillo, Support Staff
Mike Baumstark, AOC Deputy Director
Karen Kretschman
Robert Roll
Patricia Wuensche

Guests:

Amy Bain, City of Phoenix Prosecutor's Office
Denise Dancy, National Center of State Courts (Video Teleconference)
Bridget Humphrey, Community Legal Services
Eric Jeffery, City of Phoenix Prosecutor's Office
Carolyn Passamonte, Maricopa County Commissioner
Neil Websdale, Northern Arizona University
Dale Wiebusch, Arizona Coalition Against Domestic Violence

Quorum: Yes

1. Meeting Called to Order/Welcome and Introductions

Judge O'Neil called the meeting to order at 10:15 AM. All those present introduced themselves. Guests attending the meeting were welcomed.

2. New Materials

The following new materials were distributed to the members:

- a) *Revised Membership List*
- b) *Workgroup Membership Lists*
- c) *2005 Meeting Schedule*
- d) *Draft Minutes (August 25, 2004)*
- e) *Domestic Violence's Reach is Insidious (Arizona Republic, Oct. 17, 2004)*
- f) *Lethality Assessment Tools: A Critical Analysis (and other articles for Dr. Websdale's presentation)*
- g) *Extending Project Passport: Regionally Recognized Protection Orders*
- h) *Legislative Updates*
- i) *Draft Order of Protection form*
- j) *DV Benchbook (revised)*
- k) *DV Criminal Benchbook (revised)*

Revised/Update of CIDVC and Workgroup Membership Lists

Judge O'Neil asked that the members review and make any necessary corrections to the revised CIDVC membership list and workgroup membership lists.

Meeting Schedule for 2005

Judge O'Neil reviewed the handout that reflected the dates for future CIDVC meetings for 2005 and stated that it was very difficult to move the dates around to try to accommodate everyone. Judge O'Neil reminded the members that they needed to utilize the proxy process for any meetings on the 2005 schedule that they could not attend in person or by teleconference.

Approval of August Minutes

The minutes of the August 25, 2004 meeting were reviewed. Bob James requested that the minutes reflect on item 12, the CPOR/LPOR Update, that the system would be accessible to the courts throughout the state by the end of calendar year 2004. With the noted amendment by Bob James and no further discussion, corrections, deletions, or additions, the minutes were approved and seconded as presented.

3. Conference Reports/DV Updates (Judge O'Neil/Committee Members)

Some Committee members gave reports on conferences they had attended and updates on domestic violence projects. Evelyn Buckner, Judge William O'Neil and Konnie Neal attended a conference in Florida where they learned about Project Passport. Evelyn Buckner attended the week-long National Conference of District Attorneys 14th Annual Domestic Violence Conference in Anaheim, California. A majority of the information that Evelyn received from the conference

revolved around prosecuting victimless crimes after post *Crawford v. Williams* decision and extensive information on law enforcement training. She highly recommended the conference to the members to attend in the future. The next conference will be held in Reno, Nevada for 2005. Evelyn also discussed the conference that she, Judge O'Neil and Konnie attended in Florida that was sponsored by the STOP Violence Against Women. It was an opportunity to talk about cooperation, collaboration and coordination. Judge O'Neil stated that one of the things that he found very fascinating was that for many of the various states and territories attending the conference, time and time again when people from the same state would stand up to introduce their team, they were meeting each other for the first time that day. Judge O'Neil emphasized that we are fortunate in Arizona to have many opportunities to work together on DV issues, and CIDVC provides a great avenue for everyone to work together toward common goals regarding DV in Arizona. The other aspect was the excellent work, particularly in the area of DV training, that conference participants from other states shared at the conference.

Allie Bones gave a status report on the implementation of the State Plan on Domestic and Sexual Violence. There is an implementation team working on the legislation and different entities it impacts. There is also an implementation team focusing on sexual violence that has begun to meet at the three major universities, NAU, U of A, and ASU. Three focus groups have formed to study DV education, public awareness, and resources to respond to sexual assault on campus; the implementation team is putting together protocols for all the different entities where a person might come forward and report an incident of sexual assault. Also, there is a criminal justice implementation design team that is focusing on AZPOST (Arizona Police Officers' Standards and Training) and has agreed to put together a subject review committee to look at the basic training curriculum for all violence against women training. Sexual assault and stalking training will be provided, as well. Also, new law enforcement in-service training and prosecution and judicial training will be available.

4. Fatality Review Research (Dr. Neil Websdale)

Dr. Neil Websdale, NAU professor and prominent researcher and writer on DV fatality review studies, presented at the CIDVC meeting. He discussed the need for a fatality review study in Arizona and the results of his research in other states. Dr. Websdale and CIDVC member Judge Mark Moran attended a national conference on fatality review, and they are joining efforts with others from the Governor's Office for further research on DV fatalities in Arizona. Dr. Websdale provided the following website where members can log on to obtain more information on fatality review: www.ndvfri.org (National Domestic Violence Fatality Review Initiative). Dr. Websdale stated that over the last ten years, there has been a tremendous amount of research and literature accessible on this topic. There has been an enormous movement from approximately five or six states doing fatality reviews in 1990 to now thirty-four doing death reviews. There are numerous reports and a huge amount of information available. Dr. Websdale stated that he believes that states that do not move in this direction, toward establishing fatality review, run the risk of increased litigation. With more knowledge and information agency players and professionals will be increasingly compromised over the next decade or two.

Committee Member John Pombier asked Dr. Websdale that since some states have been doing this for up to fifteen years, has there been any reduction in the number of homicides during that time

period in any of the states. Dr. Websdale responded that some states have recorded fewer homicides, and some have not. Dr. Websdale stated that it could not be scientifically shown that the presence of death reviews reduces domestic homicides or domestic violence any more than one can show that mandatory arrest, as an example, decreases recidivism. Jerry Bernstein asked if there have been any studies in regards to whether there is an increase in the incidents of suicides by stalkers themselves. Dr. Websdale stated that he was not aware of any studies that document that, but definitely research is needed to document that type of statistic. Judge Elizabeth Finn asked Dr. Websdale if he had an opinion as to where the team should originate. Should it originate at a state level, through the Governor's Office, or the Attorney General's Office? Dr. Websdale responded that combinations of members or co-chairs from different agencies work better. There are models where advocacy blends with law enforcement and models where courts and the Attorney General's Office work collaboratively on review boards; it works well when two sets of agencies work together toward this goal. However, Dr. Websdale suggested that in Arizona, housing a fatality review team only with the Coalition would be a mistake; it would be a better move to house it in combination with the Coalition, law enforcement, and public health agencies or maybe through some kind of commission through the Governor's Office with a liaison to work with local communities. Another committee member asked if there have been any prevention programs that have been developed based on this research and Dr. Websdale said that there was and you could go onto their website to view the changes that have been implemented and programs that have been introduced.

Allie Bones stated that legislation is being pursued for fatality reviews in Arizona. Allie and Dr. Websdale discussed whether it made sense to have it at the commission level with the relationships of local communities or a state agency with the problem that there was not necessarily a staff person who could take this on as part of current job responsibilities whereas with a commission, that would be more of a reasonable expectation.

5. Extending Project Passport: Regionally Recognized Protection Orders (*Video Conference*) (Denise Dancy)

With technical assistance from Kim Albert and others in IT at this court and in Virginia, Denise Dancy, National Center for State Courts (NCSC) Director of the regional OP project called *Extending Project Passport*, presented via video conference during the CIDVC meeting. Denise provided a PowerPoint presentation regarding Project Passport and encouraged members to ask questions at the end of her presentation. She also was assisted by a technical staff person who addressed questions regarding the XML component of the project. The goal of Extending Project Passport is to improve recognition and enforcement of orders of protection within and among states and tribes by encouraging states and tribal courts to adopt a recognizable first page for orders of protection (i.e. to include common elements and fields necessary for NCIC). Denise informed the Committee that several states have already adopted the model first page for protection orders; most recently, six states and three territories comprising the Western-Pacific Region adopted a regionally recognized OP first page. Denise Dancy had approached Judge O'Neil and Konnie about the possibility of Arizona hosting the Central-Southwestern Region meeting in February; however, these plans have not been solidified to date. This meeting will serve to educate state teams, including Arizona and nine other states, about the intricacies

associated with federal laws that pertain to orders of protection, in an effort to enhance victim protection nationwide.

6. City of Phoenix Prosecutors' Office DV Website (Amy Bain & Eric Jeffery)

Amy Bain and Eric Jeffery, from the City of Phoenix Prosecutor's Office; gave a presentation on a DV website they designed to relay information regarding DV issues and protective orders to the public. Eric Jeffery stated that the website is to provide victims the ability to interact with the prosecutor's office through a web environment. They also put together a prosecutor's resource center so that prosecutors throughout the state of Arizona could have resources in the domestic violence arena as well. The site is password protected so that the information could be shared with the prosecutors and not the defense attorneys. Also a domestic violence training manual is available to obtain information or download for use in the daily practice. Allie Bones suggested that a warning be put on the website that if the victim felt that the e-mail was being tracked in any way, to stop and go and use a public computer for safety purposes.

7. Legislative Report (David Benton)

David Benton gave a brief summary of the judicial package for the upcoming legislative session.

Drug Court Funding:

Appropriates funds for drug courts to provide treatment, staff and drug-testing services.

Fiduciary Program Funding:

This proposal is a funding packet designed to support the additional needs of the Fiduciary Program. The packet includes possible funding sources of increased surcharges on birth and death certificates. Technical statutory changes are also addressed.

Appointment of Guardians or Conservators in Mental Health Proceedings:

The proposal would add the provision to allow the court to investigate the need, and appoint a temporary guardian or conservator, if they find a person to be "persistently or acutely disabled," in addition to the current "gravely disabled."

Mental Health Services; Access to Confidential Records:

This proposal would give a legal representative access to the patient's medical records and files pertaining to court proceedings pursuant to Title 36 or Title 14, and requires that medical records and files used in connection with these proceedings not be made part of public record.

Jury Service Reform:

This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing jury duty excuses and documentation.

Allie Bones asked David to elaborate on the Mental Health Services; Access to Confidential Records proposal and to define "legal representative." David stated that this proposal came out of probate court, and it deals with last year's HIPPA bill. A particular line was struck from the

statute that gave legal representatives access to the medical records. This year there is a consensus to fix this with the intention to make the records confidential.

David also informed the Committee that he had joined in on the substantive law workgroup under the Domestic Relations Committee to address the issue of service of protective orders. There has been some effort to make some legislative changes to the statute to allow for service of protective orders by law enforcement from any jurisdiction. David will track this and provide us with an update of any proposed legislation at the next meeting.

8. CPOR/LPOR Update (Robert Roll)

Robert Roll gave an update on a milestone that was reached with CPOR and LPOR. On October 20, 2004, Coconino County went live with LPOR. They are receiving the hard copy orders from the courts in Coconino County and have been pulling up LPOR and comparing the orders and accepting them. When an order is accepted, an electronic version is sent to the National Crime Investigation Center (NCIC) if it qualifies with all of the fields that are associated with it. Up to this point, Coconino County has had 68 acceptances which are local in Arizona and nationally. In Arizona, orders that are missing necessary fields are not accepted by NCIC. The courts have been really efficient in bringing up the required fields and entering them. Also the orders the courts receive have been corresponding with what is in LPOR. Also, along those lines the LPOR system has received over a million queries from the network. Most of those queries include the vehicle query and one-person queries. If there is a hit on a protective order, the law enforcement officer receives the LPOR information back in the officer's vehicle. There are some other counties that will be next to come in, also. Robert has been working closely with DPS and the holder of records within certain counties; he has received their approval to monitor courts, and the error rates have gone down significantly with LPOR in place. Therefore, DPS seems to feel comfortable to move forward with LPOR and processing protective orders electronically.

Judge Moran asked Robert for an update on the status for court access to information about orders of protection. Robert stated that the application for court access has been completed, and there has been some initial testing. The only question that remains is who should have access. Bob James asked, "If unserved orders are still not public record, then what is the security issue?" Robert stated that the access is only within the courts; if there is public access, anyone would be able to have access. Only served orders are displayed not unserved orders. This site will be housed on the intranet.

Judge O'Neil would like the CPOR/ Policy Workgroup Committee to be reactivated again.

9. DV Automation Trainer Report (Pat Wuensche)

Pat told the Committee that Coconino County live has been a project that has been going on for three years. It has been a major effort between Robert Roll and his staff, DPS and court training and wanted to give Robert a hand for all his effort and diligence in making this happen. Pat stated that she has been out training for approximately seven months and has trained over 200 court staff and has visited sixty courts. During this training, Pat ran into two issues that she wanted to bring forth to the Committee. The first issue involves a city where the Police Department and the

Sheriff's Office refuse to serve each others orders. Pat asked for the Committee's recommendation, and Judge Finn stated that this has been going on since 1991; basically, that was not going to change because it was an unfunded mandate to serve and enter the information into NCIC, and they refused to do this. Another issue Pat brought before the Committee was that she went to train in that specific court because they had some errors on the exception report that she felt were easy to fix. It turned out that they had orders that were served but not issued. This makes it necessary to go into the hearing screen and state that the hearing was held, and the order was issued so that it will match up with the order already being served. When Pat was in that court she discovered that they were not entering hearings into the AZTEC DV Module at all because they were in fear of invoking Brady, so there was no way to state that orders were issued because the hearings were not inputted. Pat met with much resistance from this specific court in just trying to explain the proper way to enter this information. Pat stated that the correct way of doing this procedure in having the specific court do it right was not going to happen unless the proper authority came to that specific court and mandated it. Judge O'Neil stated that that authoritative individual would be Judge Colin Campbell. He is the presiding judge over that specific county. Judge O'Neil stated that whenever Pat had an issue over any court that she needed to take that issue to that presiding judge for that county.

10. Workgroup Reports

DV Forms Committee-Bob James, Chair:

Bob James gave a status report on the Forms Workgroup's progress. Bob said that the workgroup took the protective orders through the different committees seeking approval for them with the culmination of presenting to the Arizona Judicial Council (AJC). After further review regarding the attempts to deal with the concerns expressed to the workgroup because of the *Emerson* decision, Chief Justice stated that the proposal that was submitted was not acceptable. Some members of AJC were uncomfortable with the "commit no crimes" language or more importantly that if a judge did not check the correct box, it would appear that the judge was condoning that crimes were permissible. They thought that it was objectionable for the courts to have a document that would have that implication. The Committee rejected the language and asked the workgroup to come up with more appropriate language. This action was given in a very tight time frame. They were given two weeks to change the language. A handout was passed out to the members that reflected the results of the workgroup's efforts in changing the language.

Following the AJC meeting in October, Konnie Neal had met with the DV Forms Workgroup to inform them about Project Passport and the impact the project will have on the approval process for the protective orders packet. Judge O'Neil had been advised by the Chief Justice that approval of protective order forms would be tabled until Arizona has the opportunity to participate in the regional Project Passport Conference in February.

Bob James said that although the new protective order forms have been tabled until after the Project Passport Conference he would still like to present the changed language that is reflected on the handouts distributed at the CIDVC meeting, because he and the workgroup felt that as they reviewed other states' protective orders, that the revised Arizona protective order forms were more comprehensible for people outside of the legal culture. The workgroup felt that it would be a good strategy to get the issue resolved before the February meeting so that if our representatives who

attended the February meeting chose to advocate this position, they would be well informed of what the workgroup's position was for Arizona rather than just accepting what other states have done and not taking a position. Bob would like to receive some feedback from the Committee about the draft language and provide it to the Chief Justice, the Vice Chief Justice and the AOC Director for some feedback, as well.

Judge O'Neil told the Committee that one of the issues that the Chief and the Vice Chief made very clear was that they were not expressing an opinion as they were not briefed enough on this issue but they do not believe that *Emerson* is a correct case, and they do not believe that this state need follow it as that decision is not from the Ninth Circuit. The direction the Chief and Vice Chief asked of Judge O'Neil relates to the concept that if a judge does not mark one of these boxes (with revised language in red font) then an individual who has an order of protection issued to him or her can still have a weapon. The Chief's directive to Judge O'Neil is to find out from the Committee that if *Emerson* arguably applies, to grant discretion to a judge to either state that Brady applies or not, that the defendant can have a weapon or not have a weapon even after a hearing. The Chief would like some direction from the Committee. Specifically, does this committee recommend, regardless of whether *Emerson* applies or not, that a judge should have discretion to allow an individual—who has been issued an order of protection and has been given an opportunity to appear or after a hearing—the right to continue to carry a firearm?

MOTION: To table the discussion/action on the language for the order of protection forms until the next meeting in February.

VOTE: In favor-Unanimous (verbal vote)

DV Benchbook-Evelyn Buckner, Chair:

Evelyn Buckner said that some minor revisions and cosmetic changes were made to the Benchbook. Konnie Neal distributed to the members a handout that reflected the various changes to the Benchbook. Evelyn said that on page 9 that the content was not changed but reworded for clarification purposes only. A lot of work went into the resource list and updating it as well.

DV Criminal Benchbook-Judge Mark Moran, Chair:

Judge Moran stated that the updates were made and printed and that they were also on the website highlighted in red. The changes that took place were basic modifications to reflect current law. The new Rule 17.2 amended language is also included in the Appendix. The 13-3601(M) Diversion Section legislative changes have been made.

DV Education Workgroup-Judge Mark Moran, Chair:

Judge Moran said that the Education Workgroup had not met between the last CIDVC meeting and this current one, so there was nothing to report at this time. However, this workgroup is continuing to gather information about DV issues and protective order concerns from the courts, service providers, attorneys, and public.

DV Legislative Workgroup-John Pombier, Chair:

John Pombier is the Chair of this new CIDVC Workgroup. This workgroup will study relevant DV issues and court impact prior to and during the next legislative session.

Konnie explained that non-committee members could join CIDVC Workgroups, and if the committee members knew of anyone who they would like to recommend to serve on any of the workgroups, to let her know.

Judge O'Neil asked the committee members if they would like to include future presentations, similar to those given today, at future CIDVC meetings. The response was positive to presentations made today by Dr. Websdale and Amy Bain from the City of Phoenix Prosecutor's Office, and many members indicated that similar presentations would be beneficial to the Committee in the future.

11. Call to the Public:

There were no comments from the public.

12. Next Meeting

The next meeting date has been changed from February 9, 2005 to March 23, 2005, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B.

13. Adjournment:

Judge O'Neil adjourned the meeting at 1:50 pm.